

Date of decision: 8-1-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(8-1-1996)

Mr. Ketan A. Dave for the petitioner
Ms. Sangeeta Pahwa for the respondent

ORAL JUDGMENT:

In the writ petition the petitioner has not disclosed very important fact, the date on which he was appointed. Anyhow this fact has come on record of this case which has been mentioned in the award of the Labour Court, Rajkot, which is under challenge in this writ petition. The petitioner claimed that he was serving from 15-2-1975 with the respondent Company as driver, and his services were terminated on 5-6-1977. The petitioner has claimed that he was employed by the company, M/s.J.M.Baxi & Co., whereas it is the case of the management that the petitioner was never employed by the company, and as the petitioner was not an employee of the Company there was no question of termination of his services. The petitioner workman was engaged by the partner of the company to drive his personal car and he has been paid salary by the partner. He was a domestic servant of the partner and had no relation whatsoever with the company.

2. The dispute was referred to the labour court, Rajkot by the Government in exercise of its powers as conferred under section 10(1)(c) of the Industrial Disputes Act, 1947. The petitioner filed statement of claim in the case and the respondent company filed written statement. Notice of hearing was sent to the parties. The petitioner workman produced certain documents. Application was also submitted for certain documents. Notice of date of hearing was given on 3-4-1978, whereas the application for discovery has been filed on 18-9-1978. The petitioner never remained present in Court proceedings. His representative also did not remain present on 1-12-1978 and 13-12-1978. The workman has not given any evidence. He has not filed his affidavit in support of his claim and as such the opposite side had no opportunity to cross examine and disprove his case.

3. The company filed affidavit of one Arvind Harjivandas Kothari. Averments which were made by said Arvind Harjivandas Kothari stood uncontroverted as the workman or his representative was not present to cross examine the said witness on the affidavit. The Labour Court, vide its order dated 3-1-1979, dismissed the reference, and the labour court has also held that the petitioner was not in employment of the company. The Labour Court found that he was a driver engaged by the partner of the company for his personal car and he was a domestic servant. Documentary evidence and attendance register have also been produced by the Company to show that the name of the petitioner has not been entered therein.

4. The petitioner moved an application before the Labour Court praying therein for setting aside the ex parte

award. The said application was also dismissed by the labour court vide its order dated 31st July, 1979.

5. The learned counsel for the petitioner contended that the Labour Court has committed serious illegality in passing the award against the petitioner. According to him, the Labour Court has committed serious illegality which is apparent on the face of the award, that is, documentary evidence which has been produced by the workman has not been considered or even it has not been referred to. It has next been contended that on the basis of documentary evidence produced it is clear that the petitioner was a workman of the company and not a domestic servant of the partner as alleged by the opponent. The challenge to the order dated 31st July, 1979 has been made on the ground that when the application for setting aside the ex parte award has been made it should have been accepted. In such matters the court should have taken liberal view and the absence of the petitioner or his representative should not have been taken to be so serious to the extent not to set aside the ex parte award. In support of his contention the learned counsel for the petitioner has placed reliance on two decisions of the Supreme Court, in the case of Smt. Lachi Tewari and others. vs. Director of Land Records and others, reported in AIR 1984 SC 41 and in the case of Collector, Land Acquisition, Anantnag vs. Mst. Katiji and others, reported in AIR 1987 SC 1353. On the other hand Smt. Sangita Pahwa, learned counsel for the respondent has submitted that the labour court has not committed any illegality whatsoever which warrant inference of this Court in passing the award against the petitioner as well as rejecting his application for setting aside the award.

6. It is true that the petitioner has produced certain documents, but the production of such documents itself was not sufficient because he has not filed any affidavit nor by producing the same has he given any opportunity to the respondent Company to cross examine him and to demolish the case. The document which has been produced could not have been considered unless the opponent would have been afforded an opportunity to cross examine the workman. As the petitioner has no case whatsoever in his favour, he has avoided himself to be present in the labour court for cross examination. It has next been contended that the petitioner is a driver and naturally he would have been engaged elsewhere and would have been in employment, and he has not cared for the reference which clearly establishes from the fact that he has not appeared at the relevant time before the labour court in the proceedings. His service was hardly for one year and few months. So far as the other contention of the learned counsel for the petitioner is concerned, the

learned counsel for the respondent argued that it is not a case of passing an ex parte award. The case of the petitioner has not been accepted for want of evidence. There was no sufficient cause for the absence of the petitioner or his representative on the last date, and rightly the labour court has declined to recall the award on the aforesaid ground. The case before the Supreme Court which has been cited by the learned counsel for the petitioner is distinguishable on facts. Lastly she has contended that it is the discretion of the Labour Court and when discretion has been properly exercised it cannot be said that this court should interfere with the same sitting under Article 226/227 of the Constitution of India as this Court will not be sitting as appellate court over the discretion exercised by the labour court in the matter.

7. I have given my thoughtful consideration to the contentions advanced by the learned counsel for the parties. I have taken out the translation version of the rojkam and the order dated 31st July, 1979 from the counsel for the respondent. From the rojkam it comes out that on 5-7-1978 neither the petitioner nor his representative was present. Again on 18-9-1979 neither the petitioner nor his representative was present. Thereafter on 1-12-1978 and 13-12-1978 neither the petitioner nor his representative was present. From the rojkam it comes out that the petitioner was not seriously taking the case. It is true that on the last two days the petitioner was not present and the award has been passed, but it cannot be said to be an ex parte award in true meaning and spirit of the word. Notice of the proceedings was served to the petitioner for the dates 1-12-1978 and 8-11-1978. The representative of the petitioner was present and in her presence on 1-12-1978 the date was fixed. When the petitioner had notice of the date of hearing, then I find sufficient merits in the contention of Mrs. Sangita Pahwa and it cannot be said to be an exparte award. It is a case where the petitioner has not availed of the opportunity to submit evidence. The matter does not rest here. On the next date also neither the petitioner nor his representative was present. Mere reading of the award gives out that the claim of the petitioner cannot be accepted on the ground that he has not given evidence in support of thereof. For want of evidence the award has been given against him. Otherwise also, after going through the order of the labour dated 31st July, 1979 I do not find any illegality in the same. The labour court has rightly rejected the application for recalling the award. It is a case where sufficient opportunity was given to the petitioner, but he himself has not availed of the opportunity and has not filed affidavit and has not cross examined witnesses. In these circumstances the Labour Court

has rightly proceeded with the matter and decided the same on merits.

8. In the case of Lachi Tewari and others(supra) before the Supreme Court it is suffice to say that the matter relates to the appeal proceedings pending in the High Court where normally the parties need to remain in person. In the proceedings before the High Court by way of special civil application or appeal or other proceedings which come up for hearing after years, the concerned parties are not expected to remain present and they have to depend solely on the advocates. That is not the case before labour court. The Supreme Court in the case of Lachi Tewari and others (supra) observed that after engaging a lawyer the party may remain supremely confident that the lawyer will look after his interest. At the time of hearing of appeal, personal appearance of the party is not only required but hardly useful. That cannot be case before labour court, as presence of the petitioner was necessary for conducting the case.

9. In the case of Collector, Land Acquisition, Anandnag (supra) the matter related to condonation of delay in filing of appeal by the State Government. Here is the case where the labour court has not considered the absence of the petitioner or his representative, a ground deciding the case against him but decided the case after the evidence of the respondent was taken. I fail to see any illegality therein.

10. In the result this writ petition fails and the same is dismissed. Rule discharged. No order as to costs.